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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/525,339

02/22/2005

Daniel Ballin

36-1888

3643

23117 7590 12/15/2009  
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EXAMINER

KIM, EUNHEE

ART UNIT

PAPER NUMBER

2123

MAIL DATE

DELIVERY MODE

12/15/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/525,339</p>	<p><b>Applicant(s)</b> BALLIN ET AL.</p>	
	<p><b>Examiner</b> Eunhee Kim</p>	<p><b>Art Unit</b> 2123</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 25 and 27-32.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Paul L Rodriguez/  
Supervisory Patent Examiner, Art Unit 2123

Continuation of 11. does NOT place the application in condition for allowance because: The examiner finds the application is not in condition for allowance because applicants' arguments are not persuasive, thus maintains the rejection.

For example, applicants have cited numerous passages from the specification containing the phrase "a set of weights". Although these paragraphs define that "a set of weights" can be used to modify, the representation of an avatar to match the user, there is no clear listing of parameters and correlation detailed to show how these set of weights modify the avatar.

Further passages only define the utility of these set of weights in searching databases, effective use of bandwidth and advantage how the set of weights can be used to recreate the different models. Hence in the end there still is no clear representation what are the parameter to which these weights are attached and how they are attached so that a model can be formed from the avatar to represent a user.

Spec. Pg.12 line 10- Pg.14 Line 29: Although it seems to show source of weights, it is not disclosed how the weights are computed from the predefined avatar object and input avatar object. Since the avatar are complicated mathematical vectors, any presumption how the weights would be mere speculation. Hence it is unclear how the "w" is computed.

Spec. Pg 19 line 5- Pg22 line 4: Although it seems that applicants argues how w is computed (specifically Equation 3), it is still unclear how "a set of weights" is calculated as "A" in Equation2 is not defined. Further, none of these are recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Furthermore, applicants have argued that:

Moreover, the reason that Feld et al. is not the same as Applicants' invention is that Feld et al. uses an entirely different technique to mathematically describe a body and a garment that may be fitted to that body. Feld et al. uses a three dimensional model that is formed from a plurality of polygons, with each of the polygons being defined by a vertice that denotes the center of gravity of the polygon. See, Feld et al. at paragraph [0063] and Figure 7 (which graphically depicts a selected wear article 16, which is represented by data set 40 which comprises data points 80, and virtual model 24 which includes data set 82 with a plurality of data points 84). Figure 6 of Feld et al. shows the process by which a wear article can be fitted to a model, which requires that the vertice positions be calculated, a collision detection routine be executed and a comparison of the new vertice positions be made with the material properties associated with the wear article (steps 98, 100 & 102). Thus, there is no disclosure in Feld et al. of the use of a set of weights either in relation to defining an object model which represents an avatar or in defining an object model which represents a clothing model.

The examiner disagrees. Based on applicants' own disclosure, a set of weight (see Pg 12 line 10-15 and Pg 13 lines 5-16), a set of weights is used to perform a comparison of two different versions of models (input avatar object model with the predefined avatar object model) in relation to defining an object model. Feld et al. clearly shows a wear article fitting to a model that requires a comparison of the new vertice positions be made with the material properties associated with the wear article.

Therefore, the examiner does not find applicants' arguments persuasive. The rejection is maintained..